

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOM HCR2014/0007

BETWEEN

THE STATE

AND

RV

2014: May 14th

July 25th

Appearances:

Miss Sherma Dalrymple Counsel for the State.

SENTENCING REMARKS

[1] **Stephenson J:** On the 8th May 2014 the defendant Roger Valentine was indicted by the Learned Director of Public Prosecution for the following offences:

Count 1: Buggery contrary to of Section 16(1) (a) of the Sexual Offences Act ¹

Count 2: Unlawful Sexual Connection Contrary Section 4(1) (a) of the Sexual Offences Act²

¹ Act No. 1 of 1998 of the Laws of Dominica

² *ibid*

Count 3: Indecent Assault Section 13(1) (a) of the Sexual Offences Act³

At his arraignment the defendant pleaded guilty to unlawful sexual connection. The other two counts were withdrawn

THE LAW

- [2] Section 4 of the Sexual Offences Act⁴ provides that any person who is guilty of Unlawful sexual connection is liable on conviction to imprisonment for 14 years. The law further provides that if the court is of the opinion that having regard to the particular offence or the offender taking into consideration the nature of his conduct constituting his offence, the offender should not be sentenced to imprisonment.

THE FACTS:

- [3] During the month of November 2012 the defendant was living at the house of the virtual complainant having being offered shelter by his mother as the defendant had no fixed place of abode. Sometime during his stay at the home of the VC the defendant had unlawful sexual connection with the VC in that he /// with him.
- [4] A report was subsequently made to the police, investigations were conducted and the defendant was ultimately indicted for the offence for which he has pleaded guilty.

SENTENCING CONSIDERATIONS:

- [5] As the sentencing judge I am required to bear in mind the four cardinal principles of sentencing viz. "...retribution, deterrence, prevention and rehabilitation."⁵ I am also required to consider first the aggravating and mitigating circumstances and then I must determine what sentence fits the crime.
- [6] The aggravating factors in this matter are as follows:

³ ibid

⁴ Op cit

⁵ R-v-Sergeant 60 Cr. App. R 74

- (a) The defendant has shown no remorse, in fact he seems to be more concerned with him being embarrassed and as to what view society would have of him⁶;
- (b) Breach of Trust. The defendant was offered shelter by the mother of the VC when he was homeless, he was considered a family friend who at times was trusted to care for the VC and his siblings;
- (c) The considerable age gap between the defendant and the VC. The VC was only eight years old at the time and the defendant was 25 years old;
- (d) That there was exploitation of the vulnerable minor child;
- (e) The VC has suffered psychological harm and great embarrassment, distress, humiliation and emotional damage;
- (f) The level of discomfort and disappointment suffered by the family;
- (g) The long lasting effect of the act on the VC

[7] The Mitigating factors are:

- (a) The accused had no previous convictions
- (b) The defendant cooperated with the police
- (c) The defendant pleaded guilty when arraigned.

Pre sentence Report

- [8] A pre-sentence report and psychiatric report was filed as ordered by the Court. In preparing the report the welfare officer Mrs Delia Giddings-Stedman held interviews with the virtual complainant, the defendant, relatives and community members. The report shed some light on the defendant's family and social background. The defendant's attitude towards the offence, the virtual complainant's views and the impact the incident has on him and those of the persons in the immediate environment at Colihaut and Savanne Paille.
- [9] The Virtual Complainant's mother expressed feelings of betrayal and disappointment at the Defendant's action. She expressed the view that the Virtual Complainant is now stigmatized by his peers as a result of what happened and that the situation is heart breaking and since the incident her son has become withdrawn and has been negatively affected by the incident.

⁶ See the Social Enquiry Report Page 2

[10] The VC informed the social worker that he is trying to forget the incident and when asked about his feelings about the incident he remained silent and thoughtful.

[11] The community at large viewed the Defendant as a person who was a quiet and helpful person and his actions were viewed as being deceitful and his peers expressed the view that he should be punished for his actions.

Submissions by State Counsel:

[12] Learned Counsel for the State submitted the following authorities to the court for consideration in determining the sentencing threshold:

- (a) **R –v- Loff James Lennon**⁷ in this case the defendant was the boyfriend of the mother of the VC and he masturbated in front of the 9 year old victim. He was sentenced to 2 years in prison.
- (b) **The Queen -v- Clement Lucien**⁸ in this case the defendant pleaded guilty to one count of unlawful sexual intercourse with a minor to wit a female aged 7 years. He was sentenced to 10 years imprisonment.
- (c) **The Queen –v- Sylon Forbes**⁹ the defendant was sentenced to 5 years in prison for unlawful sexual intercourse with a girl aged 15 years.
- (d) **The State –v- Gregory Augustine**¹⁰ the defendant was sentenced to 3 1/2 years in prison and 500 hours of community service of which he had to serve six months and the balance suspended for two years.
- (e) **The State –v- Julien Fontaine**¹¹ the defendant was sentenced to 5 years in prison for ???
- (f) **The State –v- Kannen Jno Baptiste**¹² the defendant who pleaded guilty was placed on a bond in the sum of \$4,000.00 with one surety to keep the peace and be of good behaviour for a period of one year. In default he was fine \$2,000 payable in six months.
- (g) **The State –v- Royson Warner**¹³ the accused was sentenced to 3 years suspended for 2 years

⁷ (1999) 1 Cr. App. R (s) 117 CA (St Vincent Y the Grenadines)

⁸ SLUCrD2011/0046

⁹ Case Number 5 of 2013 (BVI)

¹⁰ DOMHCR2009/40 (Dominica)

¹¹ DOMHCR2005/08 (Dominica)

¹² DOMHCR2006/30 (Dominica)

(h) **The State –v- Shadrach Valerie**¹⁴ the defendant was sentenced to 6 years in prison having been found guilty of indecent assault.

The Court's considerations

[13] In the **Winston Joseph et al –v- R**¹⁵ Sir Dennis Byron (CJ) laid down the guidelines for sentencing in sexual offences. Chief Justice Byron had this to say

"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors, the more common of which I attempt to list below. It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.

[14]. These guidelines have been referred to and applied in cases of this nature throughout the jurisdiction. I must bear in mind when taking the guidelines into account that I ought not to slavishly follow the guidelines lest I arrive at a sentence which can be seen as unjust.¹⁶

[15] It is important that the facts of the case be examined in order to assess the seriousness of the offence and the level of capability of the accused. Consideration is given to the extent to which the accused intended to cause harm to the VC. Based on the facts presented to the Court, the activity was nonconsensual and coercive. It is noted that the action complained of was non penetrative. He

¹³ DOMHCR2011/06

¹⁴ DOMHCR ////

¹⁵ Criminal Appeal No 4 of 2000, Criminal Appeal No 8 of 2000 and Criminal Appeal No 7 of 2000 (Consolidated) St Vincent & The Grenadines

¹⁶ See **Roger Naitram et al** Per Baptiste JA at page 11 in paras 17 & 18

pleaded guilty to unlawful sexual connection which includes "... any introduction to any extent ... into the anus of any person of – any part of the body of any other person ..."¹⁷

[16] A sexual offence is always a serious crime which calls for an immediate custodial sentence which is necessary for a variety of reasons. The gravity of the offence must be considered and a statement made highlighting same. Secondly there is a need to emphasize public disapproval for the kinds of acts which the defendant has pleaded guilty to.. Thirdly to serve as a warning to others who feel or are thinking of violating any person sexually. Fourthly to punish the offender, and last but by no means least, to protect the children of this land.

[17] I am of the view that this is a very serious offence that merits a custodial sentence of a length sufficient to punish the offender, to deter others and to emphasize the need to protect not only our young girls but our young boys from sexual exploitation and corruption. This is particularly appropriate because one of the aggravating circumstances in this case is the age of the victim and the facts involved which is particular to this case.

[18] Once again I am also mindful of Dominica's responsibilities pursuant to Article 34 of the Conventions of Rights of the Child which was ratified by Dominica on 13 March, 1991, to protect its children from all forms of sexual exploitation and sexual abuse.

[19] I have determined the seriousness of this offence having regard to the following factors:

- (a) The fact that the offence was committed inside the home of the virtual complainant that the defendant was a guest and trusted friend of the parent and Virtual Complainant
- (b) That the defendant violated the virtual complainant who was a young boy that was totally inappropriate
- (c) The fact that the defendant has no previous convictions.
- (d) The fact that the defendant admitted to be an extensive user of marijuana;¹⁸
- (e) That the defendant has expressed no remorse save for his utterances in court today.

¹⁷ Section 4 (2)(a) of the Sexual Offences Act *ibid*

¹⁸ Psychiatric Report

- (f) That the VC has been affected emotionally and psychologically and is made to suffer at the hands of his peers
- (g) The age difference between the parties, the VC was aged nine years and four months when he was assaulted he was but a young lad not in position to consider much less to be exposed to or consent to any form of sexual activity.
- (h) That there was a serious breach of trust in that the defendant was a visitor to the house who was trusted not only by the VC but by the members of his family.

[20] Having considered the circumstances of the offence and the established starting point along with the guidelines that have been laid down which requires that the punishment of the offence must be commensurate with the seriousness of the offence. Having considered the aggravated and mitigating circumstances Roger Valentine I sentence you to nine in prison reduced by 30% earned due to your guilty plea to six years commencing the day of your remand.

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Birnie Stephenson
High Court Judge (AG.)